

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED
 JAN 22 1998

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 90 of the
 Commission's Rules to Facilitate
 Future Development of SMR Systems
 in the 800 MHz Frequency band

PR Docket No. 93-144
 RM-8117, RM-8030
 RM-8029

Implementation of Sections 3 (n) and
 322 of the Communications Act
 Regulatory Treatment of Mobile Services

GN Docket No. 93-252

Implementation of Section 309 (j) of the
 Communications Act--Competitive
 Bidding

PP Docket No. 93-253

To: Daniel B. Phythyon
 Chief, Wireless Telecommunications Bureau

Erratum

On January 20, 1998, Telecellular, Inc. and nine of the participating licensees ("Licensees") in the TELECELLULAR joint venture, through counsel filed "Comments" in the above-captioned proceeding.¹ The caption of that pleading inadvertently failed to list the docket numbers. Attached hereto is a copy with a corrected caption.

Respectfully submitted,

By Albert J. Catalano
 Albert J. Catalano

DAY & CATALANO, PLLC
 1000 Connecticut Ave., N.W.
 Suite 901
 Washington, D.C. 20036
 Telephone: (202) 822-9388
 Their Counsel

Dated: January 22, 1998

¹The licensees are Caribbean Digital Communications Inc.; Caribbean SMR, Inc.; Caribbean Spectrum, Inc.; Island Communications, Inc.; Island Digital Communications, Inc.; Island SMR, Inc.; Ponce SMR, Inc.; SMR Digital PR; SMR Spectrum.

No. of Copies rec'd
 List A B C D E

Certificate of Service

I, Albert J. Catalano, an attorney in the law firm of Day & Catalano, PLLC, hereby certify that on this 22nd day of January, 1998, I caused a true and complete photocopy of the foregoing "Erratum" to be sent, via U.S. first class mail, postage prepaid, to the following:

Alan S. Tilles, Esquire
Meyer, Faller, Weisman & Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015

Elizabeth R. Sachs, Esquire
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W., 12th Floor
Washington, D.C. 20036



Albert J. Catalano

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

<i>In the Matter of</i>)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate)	RM-8117, RM-8030
Future Development of SMR Systems)	RM-8029
in the 800 MHz Frequency band)	
)	
Implementation of Sections 3 (n) and)	GNDocket No. 93-252
322 of the Communications Act)	
Regulatory Treatment of Mobile Services)	
)	
Implementation of Section 309 (j) of the)	PP Docket No. 93-253
Communications Act--Competitive)	
Bidding)	
 To: Daniel B. Phythyon		
Chief, Wireless Telecommunications Bureau		

Comments

Telecellular, Inc. ("TCI") and nine of the participating licensees ("Licensees") in the TELECELLULAR joint venture for construction of a wide area SMR system in Puerto Rico, through counsel, hereby file these comments in response to the "Petition For Partial Reconsideration" filed by North Sight Communications, Inc. ("North Sight") and the "Opposition To Petition For Partial Reconsideration" filed by Telecelluar de Puerto Rico (TPR) in the above-captioned matter.^{1 2} The Commission should affirm its "Extended Implementation Order" and find that:

¹ Although North Sight served TPR with its Petition, service was not made on TCI or the Licensees, who had filed a waiver request associated with the Docket that was pending at the time of the Petition. Because TPR was served, TCI and the Licensees were also entitled to be served under Section 1.429 (e) of the Rules, 47 C.F.R. (e). Accordingly, it is respectfully requested that the Commission accept this filing pursuant to Section 1.41 of the Rules, 47 C.F.R. 1.41 in order to create a complete record for evaluation in the public interest. Indeed, the pleading cycle in this matter is still open as of this

(1) extended implementation until May 20, 1999 for construction of a wide area SMR system in Puerto Rico extends to the *participating licensees* and not to any particular third party;³ (2) any contract disputes between the licensee and third parties are matters for state and local consideration and are not properly before the Commission in this proceeding; (3) interpretations of corporate law are within the domain of state and local courts and are not properly before the Commission in this proceeding.

At the outset, it should be noted that consistent with the requirements of the Communications Act (See 47 U.S.C. § 301, 47 U.S.C. § 310 (d)) and the Commission's prior treatment of "participating licensees" in a Puerto Rico wide-area system (see attachment), it is without question that the Commission's authorization for extended implementation to construct a wide area system goes to the *participating licensees* and *not* to any particular third party. Accordingly, the *licensees* are free to construct a wide-area system in Puerto Rico under the Commission's "Implementation Order." Disputes that may arise out of agreements with third parties are matters to be decided in state and local courts and should not be allowed to cloud the record before the Commission. See *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); also see. *Sonderling Broadcasting Co.*, 46 Rad. Reg. 2d (P&F) 889, 894 (1974); *Robert J. Kile* 3 FCC Rcd 1087 (1988). Likewise, the issues raised by North Sight with respect to corporate law matters are issues to be addressed by state and local courts in the first instance and are not appropriately before the

date. Counsel for North Sight has been advised of this filing as was the office of the counsel for TPR, who could not be reached directly.

²The licensees are Caribbean Digital Communications Inc.; Caribbean SMR, Inc.; Caribbean Spectrum, Inc.; Island Communications, Inc.; Island Digital Communications, Inc.; Island SMR, Inc.; Ponce SMR, Inc.; SMR Digital PR; SMR Spectrum.

³ DA 97-2373, released November 12, 1997 ("Extended Implementation Order").

Commission. See eg. North American Broadcasting company, Inc. 15 FCC 2d 979 (Rev. Bd. 1969); *Intercast, Inc.* 43 FCC 2d. 658 (Rev. Bd. 1973).

North Sight challenges the Commission's reasoning in granting extended implementation because it contends it is simply a case of "licensees that are arguing with each other"⁴ and therefore the delay was entirely within the control of the parties. However, because of the litigation brought by TPR, a third party, the Commission was correct in its underlying reasoning that the delay was due, in large part, to the on-going litigation between third parties and *not* to disputes *among* the participating licensee. In sum, North Sight has raised no issue that requires reconsideration of the Commission's decision to allow the licensees until May 20, 1999 to construct a wide area system in Puerto Rico.


⁴North Sight Petition, at 9.

CONCLUSION

In view of the foregoing, the Commission should take action consistent with the views set forth herein.

Respectfully submitted,

Telecellular, Inc.
Caribbean Digital Communications Inc.
Caribbean SMR, Inc.
Caribbean Spectrum, Inc.
Island Communications, Inc.
Island Digital Communications, Inc.
Island SMR, Inc.
Ponce SMR, Inc.
SMR Digital PR
SMR Spectrum

By 
Albert J. Catalano

DAY & CATALANO, PLLC
1000 Connecticut Ave., N.W.
Suite 901
Washington, D.C. 20036
Telephone: (202) 822-9388
Their Counsel

Dated: January 20, 1998

FROM :

PHONE NO. : 282 8228377

Jan. 20 1998 05:34PM P1

CERTIFICATION

On behalf of Telecellular, Inc., the undersigned Director of Telecellular, Inc. hereby certifies under penalty of perjury that the following is true and correct:

1. I have read the attached Comments.
2. All of the information contained in the attached Comments is true and correct to the best of my knowledge, information and belief.

TELECELLULAR, INC.


by: June McNally, Director

EXHIBIT

08/01/1994 20:18 9168567848
08/01/1994 15:48 2623711136
08/01/94 10:20 3717 337 1841

SPECTRUM MGMT
RICHARD S. MYERS ESQ
LICENSING POC

PAGE 01
PAGE 02
0001/001
5/10

Federal Communications Commission

1270 Fairfield Road
Oakridge, PA 17133-7245

In Reply Refer To:
7110-163

Law Offices of Richard S. Myers
1030 15th Street, N.W., Suite 908
Washington, D.C. 20005

Attn: Richard S. Myers

Dear Mr. Myers:

This is in response to your request to toll the one year construction requirement pending consideration of the request for Extended Implementation filed on behalf of the participating licensees in TELECELLULAR which was dated May 24, 1994.

Due to the delay in responding to your request for Extended Implementation, we are hereby granting your request to toll the one year construction requirement. The construction period will be tolled from May 24, 1994 to the date of which a decision is made on the Extended Implementation Request.

I hope this responds fully to your tolling request. Any further questions concerning this request may be directed to Mr. Al Knerr of our Technical Section, at (717) 337-1411 (ext. 227).

Sincerely,

Ronald B. Fuhel
Terry L. Fuhel
Chief, Land Mobile Branch

Tolling Grant

SEARCHED	INDEXED	7871	DATE 8-1-94	FILED 1
SERIALIZED	FILED	AL KNERR	POC	
FEDERAL COMMUNICATIONS COMMISSION		WASHINGTON, D.C. 20541		
TELEPHONE 202-418-1176		FAX 202-418-1541		

COMMUNICATIONS LAW GROUP

1030 15TH STREET, N.W., SUITE 808

WASHINGTON, D.C. 20005

(202) 371-8788

TELECOPIER (202) 371-1136

Richard S. Myers
Jay N. Lazarus+
Tania W. Hanna
Kenneth W. Burnley†

+ Admitted to Maryland only
† Also admitted to Pennsylvania

James J. Keller*

* Communications engineer
(not lawyer)

July 15, 1996

VIA HAND DELIVERY

Mr. William Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

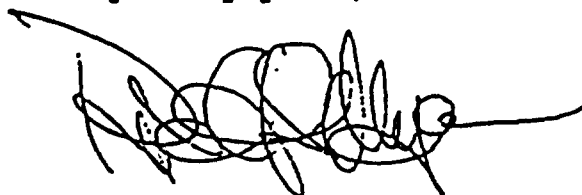
Re: Participating Licensees of TELECELLULAR
Rejustification For Extended Implementation
Authority For A Wide Area 800 MHz System
Serving The Island Of Puerto Rico

Dear Mr. Caton:

On behalf of the participating licensees of TELECELLULAR, there are hereby submitted and original and four (4) copies of their "Rejustification For Extended Implementation Authority" for a wide area 800 MHz system serving the island of Puerto Rico. Also enclosed is a diskette copy of information submitted in Exhibit A of this filing.

Please contact the undersigned if any questions arise concerning this matter.

Very truly yours,



Richard S. Myers

Enclosures

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re 800 MHz Licenses of)
PARTICIPATING LICENSEES OF) Call Signs: See Exhibit 1
TELECELLULAR)
Request for Extended)
Implementation Period for)
Wide Area SMR System pursuant)
to Section 90.629 of the)
Commission's Rules and Request)
for Tolling of the Applicable)
Construction Deadline Pending)
Consideration of this Request)
for Extended Implementation)

To: Chief, Private Radio Bureau

SECOND AMENDMENT TO REQUEST FOR EXTENDED IMPLEMENTATION PERIOD

The participating licensees of TELECELLULAR hereby file this amendment to its pending Request for Extended Implementation to include three more SMR licenses in the TELECELLULAR wide area network covering Puerto Rico. Accordingly, enclosed is a revised Exhibit 1 which adds the following SMR licenses:

Apex Communication, Inc.
Call Sign: WPDQ861
Frequency: 861-865.33750

Mayaguez SMR, Inc.
Call Sign: WPDQ879
Frequency: 861-865.78750

Mayaguez SMR, Inc.
Call Sign: WPDQ880
Frequency: 861-865.06250

It is further requested that the period for constructing the above referenced call sign be tolled from the date this amendment is filed to the date the Commission takes action on the underlying Request for Extended Implementation.

Respectfully submitted,

THE PARTICIPATING LICENSEES OF
TELECELLULAR

By: 

Richard S. Myers
Sean P. Beatty
Jay N. Lazrus
Their Attorneys

Law Offices of Richard S. Myers
1030 15th Street, N.W., Suite 908
Washington, D.C. 20005
(202) 371-0789

September 13, 1994

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re 800 MHz Licenses of)

PARTICIPATING LICENSEES OF)
TELECELLULAR)

Call Signs: See Exhibit 1

)
Request for Extended)
Implementation Period for)
Wide Area SMR System pursuant)
to Section 90.629 of the)
Commission's Rules and Request)
for Tolling of the Applicable)
Construction Deadline Pending)
Consideration of this Request)
for Extended Implementation)

To: Chief, Private Radio Bureau

REQUEST FOR EXTENDED IMPLEMENTATION PERIOD

6.

PARTICIPATING LICENSEES OF
TELECELLULAR

Their Attorneys

Richard S. Myers
Sean P. Beatty

Law Offices of Richard S. Myers
1030 15th Street, N.W., Suite 908
Washington, D.C. 20005
(202) 371-0789

May 24, 1994

CERTIFICATE OF SERVICE

I, Al Catalano, hereby certify that I served the foregoing Comments by causing the same to be sent by first-class U.S. mail, postage prepaid to the following:

Alan S. Tilles, Esq.
Meyer, Faller, Weisman & Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015

Elizabeth R. Sachs, Esq.
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W., 12th Floor
Washington, DC 20036

Dated: January 20, 1998



Albert Catalano